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COVIDIEN LP

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ASHWIN KHOBRAKAGADE, an
individual,

Plaintiff,

v.

COVIDIEN LP, a Delaware limited
partnership,

Defendant.

Case No. 16cv0468 WQH NLS

HON. WILLIAM Q. HAYES

**DEFENDANT COVIDIEN LP'S
ANSWER TO PLAINTIFF'S
COMPLAINT**

Dept: 14B

Trial Date: Not Set

Defendant COVIDIEN LP ("Defendant") answers Plaintiff ASHWIN KHOBRAKAGADE's ("Plaintiff") Complaint ("Complaint") as set forth below:

JURISDICTION AND VENUE

1. Answering the allegations of Paragraph 1 of the Complaint, the allegations are jurisdictional and/or legal conclusions and as such require no response. However, to the extent a response is required, Defendant admits that claims under the federal Racketeer Influenced and Corrupt Organizations Act are within this Court's original subject matter jurisdiction and that claims so related thereto that they form part of the same case or controversy are within this court's supplemental jurisdiction. Except as specifically admitted, Defendant denies Paragraph 1 in its entirety.

2. Answering the allegations of Paragraph 2 of the Complaint, the allegations are jurisdictional and/or legal conclusions and as such require no response.

1 However, to the extent a response is required, Defendant admits that this Court has
2 personal jurisdiction over Defendant. Except as specifically admitted, Defendant
3 denies Paragraph 2 in its entirety.

4 3. Answering the allegations of Paragraph 3 of the Complaint, the
5 allegations are legal conclusions and as such require no response. However, to the
6 extent a response is required, Defendant admits that it does business within the venue
7 of this Court and that the Complaint alleges conduct occurring within this District.

8 **THE PARTIES**

9 4. Answering the allegations of Paragraph 4 of the Complaint, Defendant
10 lacks knowledge or information sufficient to form a belief about the truth of the
11 allegations in Paragraph 4 and therefore denies Paragraph 4 in its entirety.

12 5. Answering the allegations of Paragraph 5 of the Complaint, Defendant
13 admits that it is a Delaware limited partnership, has a place of business at 15
14 Hampshire Street in Mansfield, MA, and is licensed to do business in California.
15 Except as specifically admitted, Defendant denies Paragraph 5 in its entirety.

16 6. Answering the allegations of Paragraph 6 of the Complaint, the
17 allegations are legal conclusions and as such require no response. However, to the
18 extent a response is required, Defendant denies Paragraph 6 in its entirety.

19 **GENERAL ALLEGATIONS**

20 7. Admitted.

21 8. Answering the allegations of Paragraph 8 of the Complaint, the
22 allegations pertain to a written document, which speaks for itself, and as such require
23 no response. However, to the extent a response is required, Defendant admits that by it
24 sent a letter dated May 14, 2009, in support of Plaintiff's H-1B Nonimmigrant Petition
25 requesting a change of employer and extension of stay so that Plaintiff could serve as
26 a Senior Research Engineer for Defendant. Except as specifically admitted,
27 Defendant denies Paragraph 8 in its entirety.

28 9. Answering the allegations of Paragraph 9 of the Complaint, Defendant

1 admits Plaintiff's H-1B visa was approved in August 2009. Except as specifically
2 admitted, Defendant denies Paragraph 9 in its entirety.

3 10. Answering the allegations of Paragraph 10 of the Complaint, Defendant
4 admits that Plaintiff was hired to work as a Senior R&D engineer in Chicopee,
5 Massachusetts, with a start date of June 1, 2009. Except as specifically admitted,
6 Defendant denies Paragraph 10 in its entirety.

7 11. Answering the allegations of Paragraph 11 of the Complaint, Defendant
8 lacks knowledge or information sufficient to form a belief about the truth of the
9 allegations in Paragraph 11 and therefore denies Paragraph 11 in its entirety.

10 12. Answering the allegations of Paragraph 12 of the Complaint, Defendant
11 lacks knowledge or information sufficient to form a belief about the truth of the
12 allegations in Paragraph 12 and therefore denies Paragraph 12 in its entirety.

13 13. Answering the allegations of Paragraph 13 of the Complaint, Defendant
14 lacks knowledge or information sufficient to form a belief about the truth of the
15 allegations in Paragraph 13 and therefore denies Paragraph 13 in its entirety.

16 14. Answering the allegations of Paragraph 14 of the Complaint, Defendant
17 lacks knowledge or information sufficient to form a belief about the truth of the
18 allegations in Paragraph 14 and therefore denies Paragraph 14 in its entirety.

19 15. Answering the allegations of Paragraph 15 of the Complaint, Defendant
20 lacks knowledge or information sufficient to form a belief about the truth of the
21 allegations in Paragraph 15 and therefore denies Paragraph 15 in its entirety.

22 16. Answering the allegations of Paragraph 16 of the Complaint, Defendant
23 lacks knowledge or information sufficient to form a belief about the truth of the
24 allegations in Paragraph 16 and therefore denies Paragraph 16 in its entirety.

25 17. Answering the allegations of Paragraph 17 of the Complaint, Defendant
26 lacks knowledge or information sufficient to form a belief about the truth of the
27 allegations in Paragraph 17 and therefore denies Paragraph 17 in its entirety.

28 18. Answering the allegations of Paragraph 18 of the Complaint, Defendant

1 lacks knowledge or information sufficient to form a belief about the truth of the
2 allegations in Paragraph 18 and therefore denies Paragraph 18 in its entirety.

3 19. Answering the allegations of Paragraph 19 of the Complaint, Defendant
4 lacks knowledge or information sufficient to form a belief about the truth of the
5 allegations in Paragraph 19 and therefore denies Paragraph 19 in its entirety.

6 20. Answering the allegations of Paragraph 20 of the Complaint, Defendant
7 admits that Plaintiff's position relocated to San Diego, California in September of
8 2011. Except as specifically admitted, Defendant denies Paragraph 20 in its entirety.

9 21. Answering the allegations of Paragraph 21 of the Complaint, Defendant
10 lacks knowledge or information sufficient to form a belief about the truth of the
11 allegations in Paragraph 21 and therefore denies Paragraph 21 in its entirety.

12 22. Answering the allegations of Paragraph 22 of the Complaint, Defendant
13 lacks knowledge or information sufficient to form a belief about the truth of the
14 allegations in Paragraph 22 and therefore denies Paragraph 22 in its entirety.

15 23. Answering the allegations of Paragraph 23 of the Complaint, the
16 allegations are legal conclusions and as such require no response. However, to the
17 extent a response is required, Defendant lacks knowledge or information sufficient to
18 form a belief about the truth of the allegations in Paragraph 23 and therefore denies
19 Paragraph 23 in its entirety.

20 24. Answering the allegations of Paragraph 24 of the Complaint, Defendant
21 lacks knowledge or information sufficient to form a belief about the truth of the
22 allegations in Paragraph 24 and therefore denies Paragraph 24 in its entirety.

23 25. Answering the allegations of Paragraph 25 of the Complaint, Defendant
24 lacks knowledge or information sufficient to form a belief about the truth of the
25 allegations in Paragraph 25 and therefore denies Paragraph 25 in its entirety.

26 26. Answering the allegations of Paragraph 26 of the Complaint, Defendant
27 lacks knowledge or information sufficient to form a belief about the truth of the
28 allegations in Paragraph 26 and therefore denies Paragraph 26 in its entirety.

1 27. Answering the allegations of Paragraph 27 of the Complaint, Defendant
2 lacks knowledge or information sufficient to form a belief about the truth of the
3 allegations in Paragraph 27 and therefore denies Paragraph 27 in its entirety.

4 28. Answering the allegations of Paragraph 28 of the Complaint, the
5 allegations pertain to a written document, which speaks for itself, and/or constitute
6 legal conclusions, and as such require no response. However, to the extent a response
7 is required, Defendant lacks knowledge or information sufficient to form a belief
8 about the truth of the allegations in Paragraph 28 and therefore denies Paragraph 28 in
9 its entirety.

10 29. Answering the allegations of Paragraph 29 of the Complaint, Defendant
11 admits that it obtained legal counsel to assist with immigration matters pertaining to
12 Plaintiff prior to 2013 and in 2009, 2011 and 2012. Except as specifically admitted,
13 Defendant denies Paragraph 29 in its entirety.

14 30. Answering the allegations of Paragraph 30 of the Complaint, the
15 allegations pertain to a written document, which speaks for itself, and as such require
16 no response. However, to the extent a response is required, Defendant admits that it
17 applied for an extension and that U.S. Citizenship and Immigration Services received
18 such application on April 17, 2012. Except as specifically admitted, Defendant denies
19 Paragraph 30 in its entirety.

20 31. Answering the allegations of Paragraph 31 of the Complaint, the
21 allegations pertain to written documents, which speak for themselves, and as such
22 require no response. However, to the extent a response is required, Defendant admits
23 that the Labor Condition Application for Nonimmigrant Workers ("LCA") Defendant
24 completed on or about March 30, 2012, listed an address in Mansfield, MA as "Place
25 of Employment 1" and was amended by an LCA Defendant completed on or about
26 July 25, 2012, listing an address in Chicopee, MA as "Place of Employment 1" and an
27 address in San Diego, CA as "Place of Employment 2." Except as specifically
28 admitted, Defendant denies Paragraph 31 in its entirety.

1 32. Answering the allegations of Paragraph 32 of the Complaint, the
2 allegations pertain to written documents, which speak for themselves, and as such
3 require no response. However, to the extent a response is required, Defendant admits
4 that the LCA Defendant completed on or about March 30, 2012, listed the prevailing
5 wage rate for Mansfield, MA as \$76,253.00 and was amended by an LCA Defendant
6 completed on or about July 25, 2012, listing the prevailing wage rate for Chicopee,
7 MA as \$65,936.00 and the prevailing wage rate for San Diego, CA as \$71,510.00.
8 Except as specifically admitted, Defendant denies Paragraph 32 in its entirety.

9 33. Answering the allegations of Paragraph 33 of the Complaint, the
10 allegations are legal conclusions and as such require no response. However, to the
11 extent a response is required, Defendant lacks knowledge or information sufficient to
12 form a belief about the truth of the allegations in Paragraph 33 and therefore denies
13 Paragraph 33 in its entirety.

14 34. Answering the allegations of Paragraph 34 of the Complaint, the
15 allegations pertain to a written document, which speaks for itself, and as such require
16 no response. However, to the extent a response is required, Defendant admits that U.S.
17 Citizenship and Immigration Services issued an Approval Notice with a Receipt Date
18 of April 17, 2012, reflecting that Plaintiff's H-1B visa was valid from September 1,
19 2012, to August 30, 2015. Except as specifically admitted, Defendant denies
20 Paragraph 34 in its entirety.

21 35. Answering the allegations of Paragraph 35 of the Complaint, Defendant
22 lacks knowledge or information sufficient to form a belief about the truth of the
23 allegations in Paragraph 35 and therefore denies Paragraph 35 in its entirety.

24 36. Answering the allegations of Paragraph 36 of the Complaint, Defendant
25 lacks knowledge or information sufficient to form a belief about the truth of the
26 allegations in Paragraph 36 and therefore denies Paragraph 36 in its entirety.

27 37. Answering the allegations of Paragraph 37 of the Complaint, Defendant
28 admits that it completed an LCA on or about July 25, 2012, which speaks for itself

1 and lists an address in Chicopee, MA as "Place of Employment 1" and an address in
2 San Diego, CA as "Place of Employment 2." Except as specifically admitted,
3 Defendant denies Paragraph 37 in its entirety.

4 38. Answering the allegations of Paragraph 38 of the Complaint, Defendant
5 admits that in September of 2012, Defendant issued Plaintiff a final written warning
6 for, among other things, insubordination. Said final written warning is a written
7 document, which speaks for itself. Defendant further admits that Plaintiff did not sign
8 the final written warning. Except as specifically admitted, Defendant denies
9 Paragraph 38 in its entirety.

10 39. Answering the allegations of Paragraph 39 of the Complaint, Defendant
11 admits that Plaintiff was placed on a performance improvement plan. Except as
12 specifically admitted, Defendant denies Paragraph 39 in its entirety.

13 40. Answering the allegations of Paragraph 40 of the Complaint, the
14 allegations in this paragraph are unintelligible and as such require no response.
15 However, to the extent a response is required, Defendant denies Paragraph 40 in its
16 entirety.

17 41. Answering the allegations of Paragraph 41 of the Complaint, the
18 allegations are legal conclusions and as such require no response. However, to the
19 extent a response is required, Defendant denies Paragraph 41 in its entirety.

20 42. Answering the allegations of Paragraph 42 of the Complaint, Defendant
21 lacks knowledge or information sufficient to form a belief about the truth of the
22 allegations in Paragraph 42 and therefore denies Paragraph 42 in its entirety.

23 43. Answering the allegations of Paragraph 43 of the Complaint, Defendant
24 admits Plaintiff's employment ended on or about February 19, 2013. Except as
25 specifically admitted, Defendant denies Paragraph 43 in its entirety.

26 44. Answering the allegations of Paragraph 44 of the Complaint, Defendant
27 lacks knowledge or information sufficient to form a belief about the truth of the
28 allegations in Paragraph 44 and therefore denies Paragraph 44 in its entirety.

45. Answering the allegations of Paragraph 45 of the Complaint, the allegations are legal conclusions and as such require no response. However, to the extent a response is required, Defendant denies Paragraph 45 in its entirety.

FIRST CLAIM FOR RELIEF

(Against All Defendants for Breach of Contract –

Cal. Civil Code § 45, *et seq.*)

46. Defendant restates, realleges, and incorporates by reference into this paragraph each and every allegation contained in paragraphs 1-45, above, as if set forth fully herein.

47. Answering the allegations of Paragraph 47 of the Complaint, the allegations are legal conclusions and as such require no response. However, to the extent a response is required, Defendant denies Paragraph 47 in its entirety.

48. Answering the allegations of Paragraph 48 of the Complaint, the allegations are legal conclusions and as such require no response. However, to the extent a response is required, Defendant denies Paragraph 48 in its entirety.

49. Answering the allegations of Paragraph 49 of the Complaint, the allegations are legal conclusions and as such require no response. However, to the extent a response is required, Defendant denies Paragraph 49 in its entirety.

50. Answering the allegations of Paragraph 50 of the Complaint, the allegations are legal conclusions and as such require no response. However, to the extent a response is required, Defendant denies Paragraph 50 in its entirety.

51. Answering the allegations of Paragraph 51 of the Complaint, the allegations are legal conclusions and as such require no response. However, to the extent a response is required, Defendant denies Paragraph 51 in its entirety.

52. Answering the allegations of Paragraph 52 of the Complaint, the allegations are legal conclusions and as such require no response. However, to the extent a response is required, Defendant denies Paragraph 52 in its entirety.

53. Answering the allegations of Paragraph 53 of the Complaint, the

1 allegations are legal conclusions and as such require no response. However, to the
2 extent a response is required, Defendant denies Paragraph 53 in its entirety.

3 54. Answering the allegations of Paragraph 54 of the Complaint, the
4 allegations are legal conclusions and as such require no response. However, to the
5 extent a response is required, Defendant denies Paragraph 54 in its entirety.

6 **SECOND CLAIM FOR RELIEF**

7 **(Against All Defendants Racketeer Influenced and Corrupt Organizations**
8 **Act, 18 U.S.C § 1962(c))**

9 55. Defendant restates, realleges, and incorporates by reference into this
10 paragraph each and every allegation contained in paragraphs 1-54, above, as if set
11 forth fully herein.

12 56. Answering the allegations of Paragraph 56 of the Complaint, the
13 allegations are legal conclusions and as such require no response. However, to the
14 extent a response is required, Defendant denies Paragraph 56 in its entirety.

15 57. Answering the allegations of Paragraph 57 of the Complaint, the
16 allegations are legal conclusions and as such require no response. However, to the
17 extent a response is required, Defendant denies Paragraph 57 in its entirety.

18 58. Answering the allegations of Paragraph 58 of the Complaint, the
19 allegations are legal conclusions and as such require no response. However, to the
20 extent a response is required, Defendant denies Paragraph 58 in its entirety.

21 59. Answering the allegations of Paragraph 59 of the Complaint, the
22 allegations are legal conclusions and as such require no response. However, to the
23 extent a response is required, Defendant denies Paragraph 59 in its entirety.

24 60. Answering the allegations of Paragraph 60 of the Complaint, the
25 allegations are legal conclusions and as such require no response. However, to the
26 extent a response is required, Defendant denies Paragraph 60 in its entirety.

27 61. Answering the allegations of Paragraph 61 of the Complaint, the
28 allegations are legal conclusions and as such require no response. However, to the

1 extent a response is required, Defendant denies Paragraph 61 in its entirety.

2 62. Answering the allegations of Paragraph 62 of the Complaint, the
3 allegations are legal conclusions and as such require no response. However, to the
4 extent a response is required, Defendant denies Paragraph 62 in its entirety.

5 63. Answering the allegations of Paragraph 63 of the Complaint, the
6 allegations are legal conclusions and as such require no response. However, to the
7 extent a response is required, Defendant denies Paragraph 63 in its entirety.

8 64. Answering the allegations of Paragraph 64 of the Complaint, the
9 allegations are legal conclusions and as such require no response. However, to the
10 extent a response is required, Defendant admits that it is a for-profit company in the
11 medical industry and otherwise denies Paragraph 64 in its entirety.

12 65. Answering the allegations of Paragraph 65 of the Complaint, the
13 allegations are legal conclusions and as such require no response. However, to the
14 extent a response is required, Defendant denies Paragraph 65 in its entirety.

15 66. Answering the allegations of Paragraph 66 of the Complaint, the
16 allegations are legal conclusions and as such require no response. However, to the
17 extent a response is required, Defendant denies Paragraph 66 in its entirety.

18 **THIRD CLAIM FOR RELIEF**

19 **(Against All Defendants, Racketeer Influenced and Corrupt Organizations**
20 **Act, 18 U.S.C. § 1962(d))**

21 67. Defendant restates, realleges, and incorporates by reference into this
22 paragraph each and every allegation contained in paragraphs 1-66, above, as if set
23 forth fully herein.

24 68. Answering the allegations of Paragraph 68 of the Complaint, the
25 allegations are legal conclusions and as such require no response. However, to the
26 extent a response is required, Defendant denies Paragraph 68 in its entirety.

27 69. Answering the allegations of Paragraph 69 of the Complaint, the
28 allegations are legal conclusions and as such require no response. However, to the

1 extent a response is required, Defendant admits that it is a for-profit company in the
2 medical industry and otherwise denies Paragraph 69 in its entirety.

3 70. Answering the allegations of Paragraph 70 of the Complaint, the
4 allegations are legal conclusions and as such require no response. However, to the
5 extent a response is required, Defendant denies Paragraph 70 in its entirety.

6 71. Answering the allegations of Paragraph 71 of the Complaint, the
7 allegations are legal conclusions and as such require no response. However, to the
8 extent a response is required, Defendant denies Paragraph 71 in its entirety.

9 10 **FOURTH CLAIM FOR RELIEF**

11 **(Against All Defendants for Promissory Estoppel**

12 ***Laks v. Coast Fed. Sav. & Loan Assn.*, 60 Cal. App. 3d 891 (1976)))**

13 72. Defendant restates, realleges, and incorporates by reference into this
14 paragraph each and every allegation contained in paragraphs 1-71, above, as if set
15 forth fully herein.

16 73. Answering the allegations of Paragraph 73 of the Complaint, the
17 allegations are legal conclusions and as such require no response. However, to the
18 extent a response is required, Defendant denies Paragraph 73 in its entirety.

19 74. Answering the allegations of Paragraph 74 of the Complaint, the
20 allegations are legal conclusions and as such require no response. However, to the
21 extent a response is required, Defendant denies Paragraph 74 in its entirety.

22 75. Answering the allegations of Paragraph 75 of the Complaint, the
23 allegations are legal conclusions and as such require no response. However, to the
24 extent a response is required, Defendant denies Paragraph 75 in its entirety.

25 76. Answering the allegations of Paragraph 76 of the Complaint, the
26 allegations are legal conclusions and as such require no response. However, to the
27 extent a response is required, Defendant denies Paragraph 76 in its entirety.

28 77. Answering the allegations of Paragraph 77 of the Complaint, the

1 allegations are legal conclusions and as such require no response. However, to the
2 extent a response is required, Defendant denies Paragraph 77 in its entirety.

3 **FIFTH CLAIM FOR RELIEF**

4 **(Against All Defendants for California Whistleblower Protection Claim,**
5 **California Labor Code § 1102.5(b))**

6 78. Defendant restates, realleges, and incorporates by reference into this
7 paragraph each and every allegation contained in paragraphs 1-77, above, as if set
8 forth fully herein.

9 79. Answering the allegations of Paragraph 79 of the Complaint, the
10 allegations are legal conclusions and as such require no response. However, to the
11 extent a response is required, Defendant denies Paragraph 79 in its entirety.

12 80. Answering the allegations of Paragraph 80 of the Complaint, the
13 allegations are legal conclusions and as such require no response. However, to the
14 extent a response is required, Defendant denies Paragraph 80 in its entirety.

15 81. Answering the allegations of Paragraph 81 of the Complaint, the
16 allegations are legal conclusions and as such require no response. However, to the
17 extent a response is required, Defendant denies Paragraph 81 in its entirety.

18 82. Answering the allegations of Paragraph 82 of the Complaint, the
19 allegations are legal conclusions and as such require no response. However, to the
20 extent a response is required, Defendant denies Paragraph 82 in its entirety.

21 **SIXTH CLAIM FOR RELIEF**

22 **(Against All Defendants for Intentional Infliction of Emotional Distress**
23 ***Hughes v. Pair*, 46 Cal.4th 1035, 1050 (2009))**

24 83. Defendant restates, realleges, and incorporates by reference into this
25 paragraph each and every allegation contained in paragraphs 1-82, above, as if set
26 forth fully herein.

27 84. Answering the allegations of Paragraph 84 of the Complaint, the
28 allegations are legal conclusions and as such require no response. However, to the

1 extent a response is required, Defendant denies Paragraph 84 in its entirety.

2 85. Answering the allegations of Paragraph 85 of the Complaint, the
3 allegations are legal conclusions and as such require no response. However, to the
4 extent a response is required, Defendant denies Paragraph 85 in its entirety.

5 86. Answering the allegations of Paragraph 86 of the Complaint, the
6 allegations are legal conclusions and as such require no response. However, to the
7 extent a response is required, Defendant denies Paragraph 86 in its entirety.

8 87. Answering the allegations of Paragraph 87 of the Complaint, the
9 allegations are legal conclusions and as such require no response. However, to the
10 extent a response is required, Defendant denies Paragraph 87 in its entirety.

11 88. Answering the allegations of Paragraph 88 of the Complaint, the
12 allegations are legal conclusions and as such require no response. However, to the
13 extent a response is required, Defendant denies Paragraph 88 in its entirety.

14 89. Answering the allegations of Paragraph 89 of the Complaint, the
15 allegations are legal conclusions and as such require no response. However, to the
16 extent a response is required, Defendant denies Paragraph 89 in its entirety.

17 90. Answering the allegations of Paragraph 90 of the Complaint, the
18 allegations are legal conclusions and as such require no response. However, to the
19 extent a response is required, Defendant denies Paragraph 90 in its entirety.

20 **SEVENTH CLAIM FOR RELIEF**

21 **(Against All Defendants for Negligent Infliction of Emotional Distress)**

22 91. Defendant restates, realleges, and incorporates by reference into this
23 paragraph each and every allegation contained in paragraphs 1-90, above, as if set
24 forth fully herein.

25 92. Answering the allegations of Paragraph 92 of the Complaint, the
26 allegations are legal conclusions and as such require no response. However, to the
27 extent a response is required, Defendant denies Paragraph 92 in its entirety.

28 93. Answering the allegations of Paragraph 93 of the Complaint, the

1 allegations are legal conclusions and as such require no response. However, to the
2 extent a response is required, Defendant denies Paragraph 93 in its entirety.

3 94. Answering the allegations of Paragraph 94 of the Complaint, the
4 allegations are legal conclusions and as such require no response. However, to the
5 extent a response is required, Defendant denies Paragraph 94 in its entirety.

6 95. Answering the allegations of Paragraph 95 of the Complaint, the
7 allegations are legal conclusions and as such require no response. However, to the
8 extent a response is required, Defendant denies Paragraph 95 in its entirety.

9 **EIGHTH CLAIM FOR RELIEF**

10 **(Against All Defendants for Fraud,**
11 **Cal. Civil Code §§ 1572, 1709, and 1710)**

12 96. Defendant restates, realleges, and incorporates by reference into this
13 paragraph each and every allegation contained in paragraphs 1-95, above, as if set
14 forth fully herein.

15 97. Answering the allegations of Paragraph 97 of the Complaint, the
16 allegations are legal conclusions and as such require no response. However, to the
17 extent a response is required, Defendant denies Paragraph 97 in its entirety.

18 98. Answering the allegations of Paragraph 98 of the Complaint, the
19 allegations are legal conclusions and as such require no response. However, to the
20 extent a response is required, Defendant denies Paragraph 98 in its entirety.

21 99. Answering the allegations of Paragraph 99 of the Complaint, the
22 allegations are legal conclusions and as such require no response. However, to the
23 extent a response is required, Defendant denies Paragraph 99 in its entirety.

24 100. Answering the allegations of Paragraph 100 of the Complaint, the
25 allegations are legal conclusions and as such require no response. However, to the
26 extent a response is required, Defendant denies Paragraph 100 in its entirety.

27 101. Answering the allegations of Paragraph 101 of the Complaint, the
28 allegations are legal conclusions and as such require no response. However, to the

1 extent a response is required, Defendant denies Paragraph 101 in its entirety.

2 102. Answering the allegations of Paragraph 102 of the Complaint, the
3 allegations are legal conclusions and as such require no response. However, to the
4 extent a response is required, Defendant denies Paragraph 102 in its entirety.

5 103. Answering the allegations of Paragraph 103 of the Complaint, the
6 allegations are legal conclusions and as such require no response. However, to the
7 extent a response is required, Defendant denies Paragraph 103 in its entirety.

8 104. Answering the allegations of Paragraph 104 of the Complaint, the
9 allegations are legal conclusions and as such require no response. However, to the
10 extent a response is required, Defendant denies Paragraph 104 in its entirety.

11 105. Answering the allegations of Paragraph 105 of the Complaint, the
12 allegations are legal conclusions and as such require no response. However, to the
13 extent a response is required, Defendant denies Paragraph 105 in its entirety.

14 **AFFIRMATIVE DEFENSES**

15 Defendant further asserts the following affirmative defenses. By asserting these
16 defenses, Defendant does not concede that it has the burden of production or proof as
17 to any affirmative defense asserted below. Defendant does not presently know all the
18 facts concerning the conduct of Plaintiff, or about which it is accused, sufficient to
19 state all affirmative defenses at this time. Defendant reserves the right to amend this
20 Answer should it later discover facts demonstrating the existence of additional
21 affirmative defenses.

22 **FIRST AFFIRMATIVE DEFENSE**

23 Plaintiff fails to state claims upon which relief may be granted.

24 **SECOND AFFIRMATIVE DEFENSE**

25 Plaintiff's claims for relief are barred in whole or in part by the applicable
26 statutes of limitations, including but not limited to those limitations set forth in Code
27 of Civil Procedure sections 335.1, 337, 338, 339, 340, 15 U.S.C. § 15b, and any other
28 applicable statute of limitations.

1 **THIRD AFFIRMATIVE DEFENSE**

2 If Plaintiff suffered any emotional distress (Defendant denies that Plaintiff
3 suffered any such distress), Plaintiff's emotional distress was proximately caused by
4 factors other than Defendant, or the actions taken by Defendant.

5 **FOURTH AFFIRMATIVE DEFENSE**

6 If Plaintiff suffered any emotional distress (Defendant denies that Plaintiff
7 suffered any such distress), Plaintiff contributed to his distress and, by reason of his
8 contribution, any remedy to which Plaintiff might otherwise be entitled must be
9 denied or reduced accordingly.

10 **FIFTH AFFIRMATIVE DEFENSE**

11 Plaintiff's damages for emotional distress are barred in that conduct by
12 Defendant, if any, neither contravened any established public policy nor exceeded the
13 inherent risks of employment.

14 **SIXTH AFFIRMATIVE DEFENSE**

15 If Plaintiff suffered any emotional distress as a result of any conduct undertaken
16 by Defendant, or anyone acting on Defendant's behalf (and Defendant denies that
17 Plaintiff suffered any such distress), any such distress was not severe.

18 **SEVENTH AFFIRMATIVE DEFENSE**

19 The conduct of which Plaintiff complains was not extreme and/or outrageous.

20 **EIGHTH AFFIRMATIVE DEFENSE**

21 Plaintiff has failed, refused, and/or neglected to mitigate or avoid the damages
22 complained of in the Complaint, if any.

23 **NINTH AFFIRMATIVE DEFENSE**

24 Plaintiff's claims for relief are barred in whole or in part by the doctrines of
25 laches, waiver, and/or estoppel.

26 **TENTH AFFIRMATIVE DEFENSE**

27 Plaintiff failed to fulfill conditions precedent to become entitled to the
28 compensation that Plaintiff seeks.

1 **ELEVENTH AFFIRMATIVE DEFENSE**

2 Plaintiff's claims against Defendant are barred by the doctrine of unjust
3 enrichment.

4 **TWELFTH AFFIRMATIVE DEFENSE**

5 Plaintiff was an at-will employee pursuant to Labor Code section 2922.

6 **THIRTEENTH AFFIRMATIVE DEFENSE**

7 The Complaint, and each purported claim alleged therein, is barred by the
8 doctrines of accord and satisfaction.

9 **FOURTEENTH AFFIRMATIVE DEFENSE**

10 Defendant fully performed, satisfied, or discharged any obligations, promises,
11 and/or duties (without admitting the existence of any duties, promises, or obligations)
12 that Plaintiff claims are owed.

13 **FIFTEENTH AFFIRMATIVE DEFENSE**

14 Defendant did not engage in conduct amounting to an enterprise or in any
15 purported predicate acts that amounted to a pattern of racketeering activity as alleged
16 by Plaintiff.

17 **SIXTEENTH AFFIRMATIVE DEFENSE**

18 Defendant did not cause, by way of an enterprise or a pattern of purported
19 predicate acts, injury to Plaintiff, his business or his property, as alleged by Plaintiff.

20 **SEVENTEENTH AFFIRMATIVE DEFENSE**

21 To the extent an enterprise existed, Defendant had no part in directing the
22 affairs of that enterprise.

23 **EIGHTEENTH AFFIRMATIVE DEFENSE**

24 To the extent Plaintiff alleges Defendant was an enterprise as that term is
25 defined under 18 U.S.C. § 1961, *et seq.*, Defendant has been improperly named as a
26 defendant to this action.

27 **NINETEENTH AFFIRMATIVE DEFENSE**

28 Plaintiff has failed to allege and/or cannot present proof of facts sufficient to

1 support a cause of action for conspiracy under 18 U.S.C. § 1962(d).

2 **TWENTIETH AFFIRMATIVE DEFENSE**

3 Defendant made no representations of material fact to Plaintiff that were
4 intentionally or knowingly false.

5 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

6 To the extent Defendant made any representations to Plaintiff, such
7 representations were made in good faith, honestly, with reasonable care, and without
8 ill will or malice.

9 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

10 To the extent Defendant made any representations to Plaintiff, Defendant did
11 not intend for Plaintiff to rely on those representations and/or Plaintiff did not actually
12 rely on said representations or, if he did, such reliance was not justified.

13 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

14 To the extent Plaintiff claims punitive and/or exemplary damages and/or
15 penalties, they are barred to the extent the provisions of California law allowing the
16 award of such damages or penalties, and the substantive rules, procedures and
17 standards for determining whether to award them, and, if so, in what amount, violate
18 Defendant's right to due process and equal protection under the United States and
19 California Constitutions.

20 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

21 Plaintiff fails to state facts sufficient to constitute a claim for punitive and/or
22 exemplary damages and/or penalties under California Civil Code section 3294 in that
23 Defendant committed no oppressive, fraudulent, and/or malicious acts, and neither
24 authorized nor ratified any such acts.

25 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

26 The Complaint fails to allege punitive and/or exemplary damages and/or
27 penalties with requisite specificity.

1 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

2 At all times, Defendant has acted reasonably and in good faith based upon
3 proper business judgment in light of all relevant facts and circumstances known by
4 Defendant at the time it acted, if at all, therefore barring Plaintiff's recovery in this
5 action.

6 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

7 Defendant acted, if at all, in accordance with its responsibilities under all
8 applicable laws, and has not engaged in any intentional, reckless, willful malicious,
9 outrageous, and/or negligent misconduct with respect to Plaintiff.

10 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

11 If during the course of this litigation Defendant acquires any evidence of
12 wrongdoing by Plaintiff that would have materially affected the terms and conditions
13 of Plaintiff's employment or would have resulted in Plaintiff being either demoted,
14 disciplined, and/or terminated, such after-acquired evidence shall bar Plaintiff's
15 claims on liability and/or damages and shall reduce such claims as provided by law.

16 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

17 Defendant did not retaliate against Plaintiff for disclosing information to a
18 government or law enforcement agency, or anyone else, or engaging in any other
19 behavior protected by law.

20 **THIRTIETH AFFIRMATIVE DEFENSE**

21 Any conduct of Defendant's managers and supervisors was protected by the
22 managerial privilege and all actions taken with respect to Plaintiff's employment were
23 undertaken and exercised with proper managerial discretion and/or justified by
24 legitimate and substantial business reasons.

25 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

26 Any unlawful or other wrongful acts attributed to any person(s) employed by
27 Defendant was outside the course and scope of the employment of the employee, and
28 that such acts, if any, were not authorized, ratified or condoned by Defendant nor did

1 Defendant know or have reason to be aware of such alleged conduct.

2 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

3 This Court lacks jurisdiction over the claims alleged in Plaintiff's Complaint in
4 that any claim for injuries to Plaintiff are barred to the extent they are or were
5 cognizable under the California Workers' Compensation Act [Cal. Lab. Code § 3200
6 et seq.] by reason of the exclusivity provisions of said statute in that: there was an
7 employer-employee relationship between Plaintiff and Defendant; the conduct of
8 Defendant and/or its agents as alleged in the Complaint was within the course and
9 scope of that employment relationship; and the purported injuries and damages of
10 Plaintiff, if any, arose out of that employment relationship and that alleged conduct.

11 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

12 Defendant does not presently know all facts respecting conduct by Plaintiff
13 sufficiently to state all affirmative defenses at this time. Accordingly, Defendant
14 reserves the right to amend this answer should it later discover facts demonstrating the
15 existence of additional affirmative defenses.

16 WHEREFORE, having fully answered the Complaint, Defendant respectfully
17 requests that this Court:

- 18 1. Dismiss the Complaint in its entirety;
 - 19 2. Deny each and every demand, claim and prayer for relief contained in the
20 Complaint;
 - 21 3. Award to Defendant its reasonable attorneys' fees, costs and expenses
22 incurred in defending this action recoverable under applicable law; and
 - 23 4. Grant such other and further relief as the Court may deem just and
24 proper.
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1 Dated: December 2, 2016

2
3 s/ Denise M. Visconti
4 Denise M. Visconti
5 LITTLER MENDELSON, P.C.
6 Attorneys for Defendant
7 COVIDIEN LP

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